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Office of the Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, DC 20554

CS Docket No. 97-55

Dear Commissioners:

There is considerable controversy over the value and "acceptability" of the TV rating system recently announced by the television industry and now before the Federal Communications Commission. As an Assistant Attorney General for the State of Wisconsin, I have had 25 years' experience enforcing and interpreting state and federal laws. By this letter I wish to bring to the Commission's attention my opinion as a private attorney that the proposed rating system is deficient as a matter of law and should be rejected on that basis.

It is not complicated. The burden is on the industry to

> "establish rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children" (P.L. 104-104. Sec. 551(e)(1)(A)).

Although the TV industry emphasizes that it has developed a ratings system, we must assume that Congress chose its words carefully and means what it says. The first part of sec. 551 (e) (1) (A) does focus on creating a ratings system, but it is the latter part of the provision which prescribes the purpose to be served and therefore the standard by which their adequacy must be judged. The latter portion indicates that there is "material about which parents should be informed before it is displayed to children." The kinds of material of main concern are stated to be "sexual, violent, or other indecent material."

Clearly, the provision requires the TV industry to give notice of the content of the programming and in particular whether it be "sexual, violent, or other indecent material."

The proposed system informs parents of what age categories the TV industry thinks should watch a program. There is nothing in the Telecommunications Act of 1996 that can be construed to call for an age-based rating system. The industry's

categorization of a program is purportedly based on the content of the show, but the system does not inform the parent whether the show "contains sexual, violent, or other indecent material before it is displayed." The proposed system generally indicates that any or all of the types of material may be present, but that does not satisfy the clear intent of the law.

Consider a slightly different perspective. Since the proposed system gives only general notice that any or all of the various types of material is present, the only way a parent can determine whether the program contains material which the parent considers inappropriate to their child is to watch the entire program with the child. This obviously frustrates the whole purpose of the system. It is also in direct conflict with the statutory requirement that "parents should be informed before it is displayed to children."

This legal interpretation is supported by the Findings of Congress accompanying the legislation and in particular the one where Congress contemplates a system

> "providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual or other programming that they believe harmful to their children." (P. L. 104-104, Sec. 551 (a)(9)).

The proposed system is (1) not "timely," (2) does not provide parents with information about the nature of upcoming video program," and (3) does not allow parents to "easily" block violent, sexual, or other programming they believe harmful to their children. The only way the information will be "timely" and enable parents to "easily ... block violent, sexual or other programming" is if the information about content is provided to the parent prior to the program.

Likewise, the following remarks in the House Report accompanying the Telecommunications Act support this opinion:

> "In spite of the manifold benefits bestowed by H.R. 1555 on the nation's television industry, the bill fails to elevate the public interest obligations of broadcasters to meet the needs of parents and children. It is apparent that broadcasters are failing to meet the informational and educational needs of the child audience as required by the Children's Television Act of 1990. Moreover, the issue of increasing levels of violence in our society has focused attention on the graphic violence and other objectionable programming often found on both on [sic] broadcast and cable programming. ...

> Despite repeated documentation of what society knows to be a serious problem, solutions have proved elusive. And when the hot glare of Congressional attention turns elsewhere, violence on television begins to increase again.
>
> That is why we have concluded that parents must be given the technological ability to block violent shows when they are not in the room to supervise their children. Technology exists -- called a V-Chip ("v" for violence) or C-Chip ("c" for children) -- that allows parents in their own homes to block, in advance, any program rated violent. The decision to block is the parent's; the decision to rate is the broadcaster's. In this way, we can facilitate the job of parenting in the pervasive presence of television without having the government deciding which shows are acceptable and which are not." (Congressional & Administrative News, 104th Congress, pages 115 and 117.)

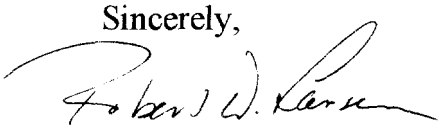
In addition to expressing the intent to give parents prior warning about content, this contemporaneous legislative history expressly contemplates that some programming will be "rated violent." The proposed system will not rate any program "violent."

> The House Report also recognizes the reality that
>
> "In today's world, where most children have two working parents, it is unrealistic to expect that mom or dad will sit with their child for hours watching television and be there to turn off violent programs." (Congressional & Administrative News, 104th Congress, page 117.)

And yet, this is exactly what the proposed system will require.

Congress has delegated to the Commission the responsibility to determine whether the proposed system is "acceptable to the Commission" (Sec. 555(e)(1)(A)). This is a matter of judgment for the Commission, which will no doubt consider many of the same factors discussed above. However, this opinion is provided to inform the Commission that before undertaking to exercise its judgment, the Commission should determine that the proposed system is deficient as a matter of law.

Sincerely,



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